

Remarks:

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Claims

Reconsideration of the rejections is respectfully requested.

The number of total claims and of independent claims remains less than the amount for which fees were previously paid.

Claim 66 has been amended to correct a typographical error. No new matter is added.

Claim Rejection - 35 U.S.C. §102(e)

Claims 60-67 stood rejected under 35 U.S.C. §102(e) based on an assertion that the claims are anticipated by Peak et al. (U.S. Patent No. 6,197,312). Although Applicant had noted in a previous paper that Peak et al. is not a valid reference under 35 U.S.C. §102(e), the Examiner nevertheless, disagrees. In particular, the Examiner contends:

As stated above the examiner has rejected the claims under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)) as Peak et al disclosed the claimed invention. The prior art goes back to GB9726398 filed 12/12/97 because the issued U.S. Patent No. 6,197,312 is a PCT/AU98/01031 which claims priority to GB9726398 filed 12/12/97. Accordingly this is a valid prior art and filed before the filing date of the claimed invention (5/13/98) by the applicant for the patent. Therefore this rejection is maintained.

Applicant respectfully disagrees with the Examiner's contention that the Peak et al. is a valid reference under 35 U.S.C. §102(e). First of all, Applicant notes that U.S. Patent No. 6,197,312 issued from an application that claimed the benefit of PCT/AU98/01038, filed December 14, 1998. Applicant submits that as such, pre-AIPA 35 U.S.C. §102(e) applies to Peak et al. Applicant asserts the §102(e) date of Peak et al. is therefore the date of completion of the requirements of §371(c)(1), (2) and (4) or the filing date of the U.S. application that claimed the benefit of the international application, and not, as the Examiner contends, the filing date of the priority application GB9726398. See "Examination Procedures under 35 U.S.C. §§102(e) and 374" which is Section IV of the USPTO Notice *Examination Guidelines for 35 U.S.C. § 102(e), as amended by the American Inventors Protection Act of 1999, and further amended by the Intellectual Property and High Technology Technical Amendments Act of 2002, and 35 U.S.C. § 102((g)) (Revised 1)*. Applicant notes that this Notice addresses U.S. Patents that issued from international applications that were filed prior to November 29, 2000 as well as those filed

on or after November 29, 2000. Note, in particular, the procedures provided under Section IV)(c)(iii) of the Notice.

Reconsideration of the rejection is respectfully requested.

Information Disclosure Statement

Applicant has concurrently filed an Information Disclosure Statement (IDS) listing the references cited in the International Search Report for PCT/ on a PTO-1449 form. It is noted that copies of the references have been received by the Office as indicated on Form PCT/DO/EO/908 (entitled, "Notification and Acceptance of Application under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495"). It is respectfully requested that the listed references be included in the "References Cited" portion of any patent issuing from this application.

FEE DEFICIENCY

- If an extension of time is deemed required for consideration of this paper, please consider this paper to comprise a petition for such an extension of time; The Commissioner is hereby authorized to charge the fee for any such extension to Deposit Account No. 50-0258.

and/or
- If any additional fee is required for consideration of this paper, please charge Account No. 50-0258.

Closing Remarks

Applicants thank the Examiner for the Office Action and believe this response to be a full and complete response to such Office Action. Accordingly, favorable reconsideration in view of this response and allowance of the pending claims are earnestly solicited.

Respectfully submitted,


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